

Department of Legislative Services  
 Maryland General Assembly  
 2012 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 1477 (Delegates Niemann and McIntosh)  
 Environmental Matters

Environment - Reduction of Lead Risk in Housing - Qualified Offer

This bill repeals the statutory amounts payable under a qualified offer for medically necessary treatments and relocation benefits for persons at risk under the Reduction of Lead Risk in Housing Law; these amounts payable have been deemed unconstitutional by the Maryland Court of Appeals. Instead, the bill states that it is the intent of the General Assembly that a methodology be established to determine a reasonable payment for a qualified offer for compliant properties. The bill requires the Maryland Department of the Environment (MDE) to create a formula for determining the payment amount of a qualified offer; the bill establishes specified requirements for the formula. The bill also expands the stated purposes of the Reduction of Lead Risk in Housing Law. MDE must adopt regulations to implement the bill.

Fiscal Summary

**State Effect:** General fund expenditures increase by about \$1.1 million in FY 2013 for MDE to contract with an expert consultant to develop the qualified offer formula and to hire a part-time assistant Attorney General and full-time contractual position to implement the bill. Future year expenditures reflect annualization and inflation for ongoing costs. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,117,800	58,000	47,700	49,900	52,200
Net Effect	(\$1,117,800)	(\$58,000)	(\$47,700)	(\$49,900)	(\$52,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** Local expenditures may decrease to the extent that the bill reinstitutes a legally permissible qualified offer that may cap the maximum liability of locally owned housing entities in cases involving lead poisoning. Revenues are not affected.

**Small Business Effect:** Potential meaningful beneficial impact on small business rental property owners to the extent that the bill reinstates a legally permissible qualified offer that may cap their maximum liability for damage caused by lead poisoning.

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## **Analysis**

**Bill Summary:** The formula developed by MDE must take into consideration education, medical, relocation, and incidental expenses, as well as lost earnings. The formula must also be at least as stringent as the U.S. Environmental Protection Agency's (EPA) single point reduction in IQ estimate in the Lead Rule, 66 F.R. 1206, Table 2. The formula must also be adjusted annually for the cost of living and be revised as determined necessary by MDE.

The bill also expands the stated purposes of the Reduction of Lead Risk in Housing Law to include ensuring that (1) rental properties are free of lead-contaminated products that could be ingested by a child; and (2) an owner of an affected property is aware of the requirements and expectations of the law.

### **Current Law/Background:**

#### *Reduction of Lead Risk in Housing Law*

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 establishes a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements.

If a landlord complies with the regulatory provisions, Chapter 114 provides liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically necessary treatments and to not more than \$9,500 for relocation benefits, for a total of \$17,000. Compliance with Chapter 114 includes having registered with MDE, having implemented all lead risk reduction treatment standards, and having provided notice to tenants about their legal rights and specified lead poisoning prevention information. The liability protection provisions of Chapter 114, however, have been rendered invalid by a recent Maryland Court of Appeals decision.

Various administrative and civil penalties apply to violations of the Reduction of Lead Risk in Housing Subtitle. Any penalties collected are paid into the Lead Poisoning Prevention Fund. That fund, which is administered by MDE, also consists of any fees collected by MDE under the Reduction of Lead Risk in Housing Subtitle and moneys

received by grant, donation, appropriation, or from any other source. MDE must use the fund to cover the costs of specified duties and responsibilities of MDE and the Lead Poisoning Prevention Commission. For each fiscal year, MDE must use at least \$750,000 from the fund for community outreach and education programs and enforcement efforts.

### *Court of Appeals Deems Liability Limitation Unconstitutional*

In a decision filed October 24, 2011 (*Jackson, et al., v. Dackman Co. et al.*, No. 131, September Term 2008), the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts. The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and, thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of rental units built between 1950 and 1978 that voluntarily opted to comply will be impacted by the court’s decision, as they will no longer have the liability protection previously afforded to them. However, it is not yet clear how landlords, along with tenants, will be impacted by the decision.

### *MDE 2011 Lead Study*

Chapter 610 of 2011 required MDE to conduct a study in consultation with members of the General Assembly and representatives of several State and local agencies and organizations reflecting the interests of landlords, housing owners, lead poisoning prevention advocates, and others. The study was required to evaluate processes that reduce the incidence of lead poisoning in both affected and nonaffected properties, including rental properties built from 1950 through 1978 and owner-occupied properties. The study group met seven times between July and December of 2011 and made recommendations regarding six different issues, which are contained in a report issued on December 31, 2011. The study group concluded that addressing the ramifications of the court’s decision was beyond the scope of the legislature’s directive to the study group but that the decision has broad implications for the future direction of the lead program. No recommendation was made regarding this issue.

### *Lead Poisoning in Children*

According to the federal Centers for Disease Control and Prevention (CDC), adverse health effects exist in children at blood lead levels less than 10 micrograms per deciliter. No treatments are known to lower the blood lead levels for children with lead levels less than 10 micrograms per deciliter. Measuring blood levels below the 10 micrograms per deciliter threshold is difficult. Therefore, although CDC warns there are no safe blood lead levels, the 10 micrograms per deciliter threshold is the standard measure at which statistics are reported.

According to the most recent data available, the number of children in Maryland with elevated blood lead levels has continued to decrease since the onset of the program. At the State level, out of the 114,829 children age six who were tested for lead in 2010, 531 (0.5%) were found to have blood lead levels greater than or equal to 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which these data were tracked, and is the eighteenth straight year in which the rate has dropped in Maryland. According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland.

### *EPA Single Point Reduction in IQ Estimate*

Table 2 contained within the Supplementary Information section of a final EPA Lead Rule published in the *Federal Register* (66 F.R. 1206) on January 5, 2001, provides an analysis of estimated benefits to explain the EPA decision in developing the rule. The first line of the table describes the effect of a single point reduction in IQ, based on a July 1995 Johns Hopkins University study of the effect of lead exposure on future earnings and the present value of average lifetime earnings reported by the U.S. Department of Commerce. The product of the estimated reduction in future earnings (2.379%) and the assumed average lifetime earnings in 1992 dollars (\$366,021) was equivalent to \$9,360 in 1995 dollars, as reported in the table.

**State Expenditures:** General fund expenditures increase by about \$1.1 million in fiscal 2013, which accounts for the bill's October 1, 2012 effective date, primarily to contract with an expert consultant to develop the qualified offer formula. The estimate also reflects the cost for MDE to hire (1) one part-time assistant Attorney General to coordinate with the consultant, oversee the development of regulations, and assist with any additional actions involving the new qualified offer formula; and (2) a contractual administrator for one year to research and develop the required regulations. The estimate includes salaries, fringe benefits, contractual assistance, communication costs, and ongoing operating expenses.

Permanent Position	0.5
Contractual Position	1.0
Salaries and Fringe Benefits	\$74,405
Contractual Assistance	1,000,000
Mailings to Rental Property Owners	40,500
Other Operating and Start-up Costs	<u>2,862</u>
<b>Total FY 2013 State Expenditures</b>	<b>\$\$1,117,767</b>

Future year expenditures reflect full salaries with annual increases and employee turnover, annual increases in ongoing operating expenses, and the fact that the contractual administrator would no longer be needed after October 2013.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, U.S. Centers for Disease Control and Prevention, *Federal Register*, Department of Legislative Services

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